

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

SUSAN L. HERTZBERG (1)

No. 6:22-CR-00003-JDK-JDL-1

**SUSAN L. HERTZBERG'S MOTION FOR WITNESS TO APPEAR VIA VIDEO
CONFERENCE OR TELEPHONICALLY**

In connection with her upcoming sentencing hearing scheduled for November 15, 2024, Susan L. Hertzberg respectfully requests permission for Luke Albrecht to appear via video conference or telephonically to testify on her behalf. Mr. Albrecht is unable to attend the hearing in person on the specified hearing date given unavoidable work commitments, but he is available to appear remotely. In support of this motion, Ms. Hertzberg states as follows:

1. The Court scheduled Ms. Hertzberg's sentencing hearing for November 15, 2023, by minute entry on October 17, 2023.
2. Ms. Hertzberg requested a continuance for the sentencing hearing due, in part, to the unavailability of witnesses in an unopposed motion denied by the Court on October 31, 2024. ECF No. 1253.
3. Ms. Hertzberg seeks to call Mr. Albrecht to provide evidence on her behalf in response to the Court's order directing the parties to "provide evidence, including witness testimony and exhibits, to support their arguments," particularly on the issues identified by the Court in its order, including: (1) when Ms. Hertzberg joined the conspiracy; (2) "the foreseeability of payments to physicians associated with Ascend, Benefitpro, and Next Level for tests performed by companies other than Boston Heart"; and (3) "whether

payments made after [Ms. Hertzberg] left Boston Heart were foreseeable to [her].” ECF No. 1253.

4. Unfortunately, Mr. Albrecht is unable to travel to attend the sentencing hearing in person given preexisting business obligations at his current company due to his role as General Counsel. Mr. Albrecht is, however, available to appear remotely.
5. This Court has discretion to allow for remote testimony. *See, e.g., Seagen, Inc. v. Daiichi Sankyo Co., Ltd.*, Case No. 2:20-cv-337-JRG, Dkt. 382 at 253:25-255:10 (E.D. Tex. Apr. 13, 2022) (allowing live testimony of damages expert by remote means); *United States v. Barnes*, 30 F.3d 575, 577 (5th Cir. 1994) (noting trial court provided the defendant the “option of testifying by closed-circuit television”).
6. The undersigned conferred with the Government. The Government opposes this motion. Ms. Hertzberg, therefore, respectfully requests that this Court grant her motion and allow Mr. Albrecht to appear remotely via video conference or telephonically for her sentencing hearing scheduled November 15, 2024.

Date: November 12, 2024

Respectfully submitted,

/s/ David Bitkower
David Bitkower – Lead Attorney
Pro Hac Vice
Bar Nos.: N.Y. 4190096; D.C. 198596
Jenner & Block
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
dbitkower@jenner.com

Keisha N. Stanford
Pro Hac Vice
Bar Nos.: CA 274166; D.C. 1015268
Jenner & Block
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001

kstanford@jenner.com

Shreve Ariail
Pro Hac Vice
Bar Nos.: VA 96321; N.Y. 4155339
Jenner & Block
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
sariail@jenner.com

Wesley Hill
Tex. Bar No. 24032294
J. Wesley Hill, P.C.
5380 Old Bullard Rd. Ste. 600 – Box 180
Tyler, TX 75703
Tel: (903) 251-3950
wh@jwhpc.com

CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel for Defendant conferred with counsel for the government regarding the relief sought in this motion. The government advised that it opposes the motion.

/s/ David Bitkower
David Bitkower

CERTIFICATE OF SERVICE

I certify that on November 12, 2024 a copy of the foregoing document was filed via the court's CM/ECF system and thereby served electronically on all counsel of record.

/s/ David Bitkower
David Bitkower